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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Scott Campbell

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EXAMINER

DEODHAR, OMKAR A

ART UNIT

PAPER NUMBER

3714

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08/16/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/691,929	Applicant(s) CAMPBELL, SCOTT	
	Examiner OMKAR DEODHAR	Art Unit 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 1-24 and 26-30 is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 1-24,26-30 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Response to Arguments

1. In view of the Appeal Brief filed on 6/1/2011 PROSECUTION IS HEREBY REOPENED. To avoid abandonment of the application, appellant must exercise one of the following two options:
 - (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
 - (2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below.
2. Applicant's arguments have been considered but are moot in view of the new grounds of rejection.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. **Claims 19-23** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter wherein the claim recites a **processing program** that is not claimed as embodied in a non-transitory storage medium. Because Applicant's disclosure is

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not limited solely to tangible embodiments, the claimed subject matter, given the broadest reasonable interpretation, may be a carrier wave comprising of instructions and is, therefore, non-statutory. The United States Patent and Trademark Office (USPTO) is obliged to give claims their broadest reasonable interpretation consistent with the specification during proceedings before the USPTO. See *In re Zletz*, 893 F.2d 319 (Fed. Cir. 1989) (during patent examination the pending claims must be interpreted as broadly as their terms reasonably allow). The broadest reasonable interpretation of a claim drawn to a computer readable storage medium typically covers forms of non-transitory tangible media and transitory propagating signals *per se* in view of the ordinary and customary meaning of computer readable storage media, particularly when the specification is silent. (See MPEP 2111.01). When the broadest reasonable interpretation of a claim covers a signal *per se*, the claim must be rejected under 35 U.S.C. § 101 as covering non-statutory subject matter (See *In re Nuijten*, 500 F.3d 1346, 1356-57 (Fed. Cir. 2007) (transitory embodiments are not directed to statutory subject matter) and Interim Examination Instructions for Evaluating Subject Matter Eligibility Under 35 U.S.C. § 101, Aug. 24, 2009; p. 2).

4. To overcome this type of rejection, the claims need to be amended to include only the physical computer storage media unassociated with any intangible or non-functional transmission media. Examiner suggests adding the word -- non-transitory -- to the claim. Other word choices will be considered but the one proposed shall overcome the rejection. Appropriate attention is required.

Claim Rejections - 35 USC § 103

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5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. **Claims 1-24 and 26-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshida et al. (US 6,652,376 B1) in view of Mott et al. (US 5,269,687), in yet further view of Gran Turismo 3 ("GT3", released 4/28/2001; cited with prior action dated 10/29/2009).**

Regarding claims 1, 2, 12, 19-22, 24 and 30, Yoshida discloses a method, system and computer-readable storage medium having embodied thereon a program for displaying a graphical path in a video game, comprising retrieving graphical path data associated with a previous run, displaying the graphical path data as a visual string of path markers, and determining a color for a displayed path marker of the visual string of path markers based upon a comparison of a player's current speed and a reference speed at a given point.

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Specifically, Yoshida discloses retrieving graphical path data associated with a previous run in that the video game system displays a reference path travel line established by a previous run (col. 11, lines 37-41), wherein the reference path may be displayed as a visual string of path markers (Fig. 9, 10,14,15,19). A color is determined for a displayed path marker based upon a player's current travel speed relative to the reference, i.e. ideal, travel speed that was established on a previous run (col. 10, lines 20- 42). For instance, if it is determined that the player's current travel speed exceeds the ideal travel speed, the graphical path markers change colors (e.g. turn red) in order to indicate to the player whether they should apply the brakes to decrease their current travel speed (col. 12, lines 4-33). The reference speeds are recorded for each point, i.e. block, in the path (col. 2,lines 48-53).

Yoshida does not specifically disclose determining a color for a displayed path marker of the visual string of path markers based upon an elapsed time from a starting point to a current location of a player character of a current video game session and an elapsed time from a starting point to the current location of the player character associated with the displayed path marker from the previous run. However, it is well known in racing-type video games to provide a player with a visual indication of a current lap time in comparison with a previous lap time, as disclosed by Mott (Fig. 5, Current Lap **192**, Previous Best Lap **194**, Lap Time **162**; col. 5, lines 60-67). That is, Mott displays an elapsed time from a starting point to a current location as the player approaches the finish line in the form of a Current Lap time display (Fig. 5), which measures the amount of time that has elapsed from the beginning of the race until the player reaches the finish line point. Mott visually displays a comparison of a current elapsed time to a previously recorded elapsed time from a starting point to a finish line location of a player in the

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Previous Best Lap time display (Fig. 5). Additionally, Mott discloses the use of a ghost car **150** (Fig. 3,4), i.e. graphical path data, which visually displays to the player a complete recording of a lap previously run by the user (col. 5, lines 8-37).

It would have been obvious to one of ordinary skill in the art to combine the color changing graphical path markers of Yoshida with the current and previous lap time indicators of Mott as these are both means of visually providing information to a player during a video game play session. Further, Mott specifically discloses providing instruction to a player for parameters other than time in col. 5, lines 26-34, which teaches providing indicators for speed similar to the invention disclosed by Yoshida. To provide a visual indication of current lap time compared to a previous lap time is known in a racing-type video game system; providing an indication of a game parameter in the form of color changing path markers is also known in a racing-type video game system. To modify Yoshida's color changing markers to provide an indication of a currently elapsed time compared to a previously recorded elapsed time, instead of based upon current speed compared to a previously recorded ideal speed, would have required only routine skill in the art. Thus, all of the combined elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

The combination of Yoshida & Mott does not explicitly teach wherein the current location is after the starting line but prior to the finish line for a course being traversed in the current video game session.

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Gran Turismo 3 ("GT3"), Sony Computer Entertainment, Released April 28, 2001, User Manual, Page 7. GT3 teaches a time trial arcade mode. "In time trial, the object is to complete the course in the shortest amount of time...To help improve your time, Ghost Data...can be loaded so you can compare your current pace with your record pace." See the GT3 user manual, Page 7. Where the record pace is a previous lap, the Ghost Data appearing alongside a player's current location teaches a portion of the race after a starting point but prior to crossing the finish line, for a course being traversed in the current video game session.

It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to show this partial race data on the display screen in Yoshida in view of Mott's (Mott, Figures 4/5). Note that such data would merely compliment data indicating previous lap time & would by no means detract from Mott's game. This modification is viewed as a substitution of known elements (providing previous race data indicating intermediate race timings) with the predictable results of providing players more data so that they can beat a previous best time. Such modification is also well within the level of ordinary skill in the art.

Regarding claims 3-7, 26, Mott discloses the ability to determine a character state associated with a player character, including whether the character state is an off-track, on-track, or crashed state (Mott, col. 7, lines 14-24). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide a visual indicator for any particular character state that may be associated with a player character as Mott teaches several examples of said character states able to be determined by the game.

Regarding claims 8-11, 14, 15, Mott discloses the ability to display a visual, graphical indicator for previous lap times in Fig. 4, including a champion best lap time ("Beat" 164),

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previous run lap time (“Last” **164**), and player best lap time (Fig. 5, “Previous Best Lap” **194**).

Therefore, it would have been obvious to display any previous run, including a worst time and an average time, as Mott discloses the ability to measure multiple player lap times.

Regarding claim 13, 23, 29, Mott discloses storing the current graphical path data as “best time” run graphical path data if a total elapsed time of the current video game session is less than a total elapsed time associated with a previous “best time” run, wherein a new best time obtained by a player is stored and displayed as the ghost car path (col. 5, lines 35-37).

Regarding claim 16, Yoshida discloses the visual string of path markers are generated at substantially equal-distance from each other (Fig. 9, 10,14,15,19).

Regarding claims 17, 18, 27, 28, Yoshida discloses retrieving the path data associated with a previous run, i.e. the reference data, from a data cache (i.e. database) on a memory (i.e. ROM), in col. 8, lines 31-38.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OMKAR DEODHAR whose telephone number is (571)272-1647. The examiner can normally be reached on M-F: 8AM - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, David Lewis can be reached on 571-272-7673. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Omkar Deodhar/
Examiner, Art Unit 3714

/DAVID L LEWIS/

Supervisory Patent Examiner, Art Unit 3714